

10/565 807

PATENT COOPERATION TREATY

From the
INTERNATIONAL SEARCHING AUTHORITY

To:

PCT

Translation

WRITTEN OPINION OF THE
INTERNATIONAL SEARCHING AUTHORITY

(PCT Rule 43bis.1)

		Date of mailing (day/month/year)
Applicant's or agent's file reference HP 501/03 PCT		FOR FURTHER ACTION See paragraph 2 below
International application No. PCT/DE2004/001640	International filing date (day/month/year) 23.07.2004	Priority date (day/month/year) 25.07.2003
International Patent Classification (IPC) or both national classification and IPC		
Applicant WEBASTO AG		

<p>1. This opinion contains indications relating to the following items:</p> <p><input checked="" type="checkbox"/> Box No. I Basis of the opinion <input type="checkbox"/> Box No. II Priority <input type="checkbox"/> Box No. III Non-establishment of opinion with regard to novelty, inventive step and industrial applicability <input checked="" type="checkbox"/> Box No. IV Lack of unity of invention <input checked="" type="checkbox"/> Box No. V Reasoned statement under Rule 43bis.1(a)(i) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement <input type="checkbox"/> Box No. VI Certain documents cited <input type="checkbox"/> Box No. VII Certain defects in the international application <input type="checkbox"/> Box No. VIII Certain observations on the international application</p> <p>2. FURTHER ACTION</p> <p>If a demand for international preliminary examination is made, this opinion will be considered to be a written opinion of the International Preliminary Examining Authority ("IPEA") except that this does not apply where the applicant chooses an Authority other than this one to be the IPEA and the chosen IPEA has notified the International Bureau under Rule 66.1bis(b) that written opinions of this International Searching Authority will not be so considered.</p> <p>If this opinion is, as provided above, considered to be a written opinion of the IPEA, the applicant is invited to submit to the IPEA a written reply together, where appropriate, with amendments, before the expiration of 3 months from the date of mailing of Form PCT/ISA/220 or before the expiration of 22 months from the priority date, whichever expires later.</p> <p>For further options, see Form PCT/ISA/220.</p> <p>3. For further details, see notes to Form PCT/ISA/220.</p>
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Name and mailing address of the ISA/EP	Authorized officer
Facsimile No.	Telephone No.

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Box No. I Basis of this opinion

1. With regard to the language, this opinion has been established on the basis of the international application in the language in which it was filed, unless otherwise indicated under this item.
 This opinion has been established on the basis of a translation from the original language into the following language _____, which is the language of a translation furnished for the purposes of international search (under Rule 12.3 and 23.1(b)).
2. With regard to any nucleotide and/or amino acid sequence disclosed in the international application and necessary to the claimed invention, this opinion has been established on the basis of:
 - a. type of material
 a sequence listing
 table(s) related to the sequence listing
 - b. format of material
 in written format
 in computer readable form
 - c. time of filing/furnishing
 contained in the international application as filed.
 filed together with the international application in computer readable form.
 furnished subsequently to this Authority for the purposes of search.
3. In addition, in the case that more than one version or copy of a sequence listing and/or table(s) relating thereto has been filed or furnished, the required statements that the information in the subsequent or additional copies is identical to that in the application as filed or does not go beyond the application as filed, as appropriate, were furnished.
4. Additional comments:

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Box No. IV Lack of unity of invention

1. In response to the invitation (Form PCT/ISA/206) to pay additional fees the applicant has:
 - paid additional fees
 - paid additional fees under protest
 - not paid additional fees
2. This Authority found that the requirement of unity of invention is not complied with and chose not to invite the applicant to pay additional fees.
3. This Authority considers that the requirement of unity of invention in accordance with Rules 13.1, 13.2 and 13.3 is
 - complied with
 - not complied with for the following reasons:

See supplemental sheet

4. Consequently, this opinion has been established in respect of the following parts of the international application:

- all parts
- the parts relating to claims Nos. _____

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Box No. V	Reasoned statement under Rule 43bis.1(a)(i) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement	
1. Statement		
Novelty (N)	Claims	<u>10-13</u> YES
	Claims	<u>1-9, 14-16</u> NO
Inventive step (IS)	Claims	<u>10-13</u> YES
	Claims	<u>1-9, 14-16</u> NO
Industrial applicability (IA)	Claims	<u>1-16</u> YES
	Claims	NO
2. Citations and explanations:		
1) Reference is made to the following documents:		
D1: DE 102 13 558 A1		
D2: WO 98/35398 A		
D3: DE 40 16 157 A1		
D4: DE 100 44 703 A1		
2) NOVELTY:		
2.1) The present application does not meet the requirements of PCT Article 33(1) because the subject matter of independent claims 1 and 16 is not novel within the meaning of PCT Article 33(2).		
2.2) Documents D1 (figure 5; claims 1-6; paragraph 70), D2 (figure 6; page 3, lines 14-25; page 6, lines 20-34; claims 1-24), D3 (column 5, lines 2-18; figure 5) and D4 (paragraphs 69, 70, 141-143; claims 1-31; figures 1, 2) disclose in each case:		
<p>A fuel cell array having a fuel cell stack which comprises a plurality of fuel cells, and having a first and a second end plate which delimit the fuel cell stack</p>		

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at its stack ends, characterized in that at least one force transmission device is provided which transmits a first force onto the first end plate in the direction of the second end plate and a second force onto the second end plate in the direction of the first end plate, elastic means participating in the force transmission.

An apparatus (106) for fastening a fuel cell array to a housing, characterized in that the fuel cell array is connected to the housing using elastic means via an element which is connected to a fuel cell stack.

The subject matter of independent claims 1 and 16 is therefore not novel.

3.1) Claims 2-9 and 14-16 do not contain any features which, in combination with the features of any claim to which they refer, meet the PCT requirements for novelty and inventive step (cf. document D1 with regard to claims 2-9, 14, 16; cf. document D2 with regard to claims 2-8).

3.2) The combination of features which is contained in dependent claims 10-13 is neither known from the present prior art nor rendered obvious by it.

4) CLARITY:

4.1) The application does not meet the requirements of PCT Article 6 because claims 1 and 16 are not clear.

4.2) It is apparent from the description (*inter alia* on page 2, lines 12-16) and from claim 16 that the following

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features are essential for the definition of the invention:

- (i) it is an SOFC fuel cell array
- (ii) that the force transmission element is connected elastically to the housing.

Since independent claim 1 does not contain these features, it does not meet the requirement of PCT Article 6 in conjunction with PCT Rule 6.3(b) that each independent claim must include all the technical features essential to the definition of the invention.

4.3) The phrase "in particular" in claim 16 is vague and unclear and leaves the reader uncertain as to the meaning of the technical features in question. As a result, the subject matter of said claim is not clearly defined.

Expressions of this type do not restrict the scope of protection of the claim, that is to say, any feature preceded by such an expression must be considered entirely optional.

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Supplemental Box

In case the space in any of the preceding boxes is not sufficient.

Continuation of:

Box IV

- 1) This authority has determined that the international application contains multiple inventions or groups of inventions which are not linked by a single general inventive concept (PCT Rule 13.1), as follows:

Invention I (claims 1-15):

A fuel cell array having a fuel cell stack which comprises a plurality of fuel cells, and having a first and a second end plate which delimit the fuel cell stack at its stack ends, characterized in that at least one force transmission device is provided which transmits a first force onto the first end plate in the direction of the second end plate and a second force onto the second end plate in the direction of the first end plate, elastic means participating in the force transmission.

Invention II (claim 16):

An apparatus for fastening a fuel cell array to a housing, characterized in that the fuel cell array is connected to the housing using elastic means via an element which is connected to a fuel cell stack.

- 2) The abovementioned (groups of) inventions are not so linked as to form a single general inventive concept pursuant to PCT Rule 13.1.

A comparison of the specified (groups of) inventions

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Supplemental Box

shows that the special technical features of none of the abovementioned groups of claims have commonalities with the special technical features of one of the other groups of claims and are therefore not "identical special technical features", as required in PCT Rule 13.2.

Accordingly, there is no direct technical relationship between these inventions which is expressed in one or more identical or corresponding special technical features, within the meaning of PCT Rule 13.2.

The abovementioned 2 (groups of) inventions therefore fail to meet the requirement of unity of invention pursuant to PCT Rule 13.1 and 13.2 (see also (V.4) CLARITY).